

**RULES GOVERNING PROCEEDINGS IN THE  
UNITED STATES DISTRICT COURT UNDER  
§ 2255 OF TITLE 28, UNITED STATES CODE**

**Rule 2. Motion**

1 \* \* \* \* \*

2 **(b) Form of Motion.** The motion shall be in substantially the  
3 form annexed to these rules, except that any district court  
4 may by local rule require that motions filed with it shall be  
5 in a form prescribed by the local rule. Blank motions in  
6 the prescribed form shall be made available without  
7 charge by the clerk of the district court to applicants upon  
8 their request. It shall specify all the grounds for relief  
9 which are available to the movant and of which the  
10 movant has or, by the exercise of reasonable diligence,  
11 should have knowledge and shall set forth in summary  
12 form the facts supporting each of the grounds thus  
13 specified. It shall also state the relief requested. The



**Rule 3. Filing Motion**

\* \* \* \* \*

1  
2 **(b) Filing and service.** ~~Upon receipt of the motion and~~  
3 ~~having ascertained that it appears on its face to comply~~  
4 ~~with rules 2 and 3, the~~ The clerk of the district court shall  
5 file the motion and enter it on the docket in ~~his~~ the clerk's  
6 office in the criminal action in which was entered the  
7 judgment to which it is directed. ~~He~~ The clerk shall  
8 thereupon deliver or serve a copy of the motion together  
9 with a notice of its filing on the United States Attorney of  
10 the district in which the judgment under attack was  
11 entered. The filing of the motion shall not require said  
12 United States Attorney to answer the motion or  
13 otherwise move with respect to it unless so ordered by  
14 the court.

## COMMITTEE NOTE

The first portion of Rule 3(b) has been deleted because it conflicts with the requirement in Federal Rule of Civil Procedure 5(e) that the clerk file the papers. The amendment also conforms to current practice; the clerk files the petition and refers it to the court for its consideration of any defects in the petition.

## 1 Rule 6. Discovery

2       **Leave of court required.** A party may invoke the processes  
3       of discovery available under the Federal Rules of Criminal  
4       Procedure or the Federal Rules of Civil Procedure or  
5       elsewhere in the usages and principles of law if, and to the  
6       extent that, the judge in the exercise of his discretion and for  
7       good cause shown grants leave to do so, but not otherwise. If  
8       necessary for effective utilization of discovery procedures,  
9       counsel shall be appointed by the judge for a movant who  
10      qualifies for appointment of counsel under 18 U.S.C.  
11      § 3006A(g). § 3006A.

12 \* \* \* \* \*

## COMMITTEE NOTE

The amendment to Rule 6(a) reflects amendments to 18 U.S.C. § 3006A.

## Rule 8. Evidentiary Hearing

\* \* \* \* \*

**(b) Function of the magistrate judge.**

(1) When designated to do so in accordance with 28 U.S.C. § 636(b), a magistrate judge may conduct hearings, including evidentiary hearings, on the motion, and submit to a judge of the court proposed findings and recommendations for disposition.

(2) The magistrate judge shall file proposed findings and recommendations with the court and a copy shall forthwith be mailed to all parties.

**(3)** Within ten days after being served with a copy, any party may serve and file written objections to such

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13                    proposed findings and recommendations as provided  
14                    by rules of court.

15            (4) A judge of the court shall make a de novo  
16                    determination of those portions of the report or  
17                    specified proposed findings or recommendations to  
18                    which objection is made. A judge of the court may  
19                    accept, reject, or modify in whole or in part any  
20                    findings or recommendations made by the magistrate  
21                    judge.

22            (c) **Appointment of counsel; time for hearing.** If an  
23                    evidentiary hearing is required, the judge shall appoint  
24                    counsel for a movant who qualifies for the appointment  
25                    of counsel under 18 U.S.C. ~~§ 3006A(g)~~ § 3006A and the  
26                    hearing shall be conducted as promptly as practicable,  
27                    having regard for the need of counsel for both parties for  
28                    adequate time for investigation and preparation. These

29 rules do not limit the appointment of counsel under 18  
30 U.S.C. § 3006A at any stage of the proceeding if the  
31 interest of justice so requires.

32 \* \* \* \* \*

### COMMITTEE NOTE

The amendments to Rule 8 address two issues. First the term "magistrate" has been changed to "magistrate judge" to reflect the change in name of magistrates to United States magistrate judges. Second, the amendment to Rule 8(c) reflects amendments to 18 U.S.C. § 3006A.

### Rule 9. Delayed or Successive Motions

1 \* \* \* \* \*

2 **(b) Successive motions.** ~~A second or successive motion may~~  
3 ~~be dismissed if the judge finds that it fails to allege new or~~  
4 ~~different grounds for relief and the prior determination~~  
5 ~~was on the merits or, if new and different grounds are~~  
6 ~~alleged, the judge finds that the failure of the movant to~~  
7 ~~assert those grounds in a prior motion constituted an~~

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8            ~~abuse of the procedure governed by these rules.~~ Before a  
9            second or successive motion is presented to the district  
10           court, the applicant shall obtain an order from the  
11           appropriate court of appeals authorizing the district court  
12           to consider the motion.

13                               \* \* \* \* \*

**COMMITTEE NOTE**

Rule 9(b) has been amended to reflect the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 which amended 28 U.S.C. 2244. That new provision places limitations on the ability of a petitioner or movant to file successive applications for habeas corpus relief. Section 2244(b) explicitly states that a second or successive petition must be first presented to the appropriate court of appeals for an order that authorizes the district court to consider the application dismissed if it was presented in an earlier petition. The amendment to Rule 9(b) is intended to reflect that statutory provision.



**Rule 10. Powers of ~~Magistrates~~ Magistrate Judges**

- 1           The duties imposed upon the judge of the district court by
- 2           these rules may be performed by a United States magistrate
- 3           judge pursuant to 28 U.S.C. § 636.

**COMMITTEE NOTE**

Rule 10 has been amended to reflect the change in the title of United States magistrates to United States magistrate judges.